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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

- - - - -x

In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 28, 2016

3:14 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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Telephone Conference on the Record, Regarding Discovery

Transcribed by: Penina Wolicki
eScribers, LLC
700 West 192nd Street, Suite #607
New York, NY 10040
(973)406-2250
operations@escribers.net

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A P P E A R A N C E S : (TELEPHONICALLY)

MORRISON & FOERSTER LLP

Attorneys for The ResCap Borrower Claims Trust
250 West 55th Street
New York, NY 10019

BY: JESSICA J. ARETT, ESQ.

SEVERSON & WERSON, P.C.

Attorneys for Ocwen Loan Servicing, LLC
One Embarcadero Center
Suite 2600
San Francisco, CA 94111

BY: BERNARD J. KORNBERG, ESQ.

ERLINDA ABIBAS ANIEL

PRO SE

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 P R O C E E D I N G S

2 THE COURT: And is someone on from Morrison &
3 Foerster, as well, for the Trust?

4 MS. ARETT: Yes, Your Honor. Jessica Arett from
5 Morrison & Foerster on behalf of the ResCap Borrower Claims
6 Trust.

7 THE COURT: Okay. Mr. Kornberg, go ahead.

8 MR. KORNBERG: Your Honor --

9 THE COURT: Wait, before you go on.

10 MR. KORNBERG: Oh, sorry, Bernard Kornberg. Your
11 Honor, the reason we filed this motion to quash is, I mean,
12 there's several grounds. One, is it's -- the subpoena is
13 defective. It wasn't properly served on Ms. Smoot; it was just
14 served on Ocwen; and on top of which, no witness fees were
15 provided.

16 But even if it had properly been served, it's just
17 unnecessary. First, it requires Ms. Smoot to appear eight days
18 after a subpoena was purportedly served, which is just not
19 enough time for her to prepare. And second, it's unclear what
20 that is relevant to this litigation Ms. Smoot could even
21 possibly testify as to.

22 As I understand it from reading the pleadings and
23 other papers in the objection to claim, there's a very limited
24 issue before the Court, whether or not a power of attorney was
25 executed authorizing GMAC to act on behalf of the investor of

1 the loan trust, which was HSBC. Ms. Smoot isn't a party to
2 that. She never worked for HSBC. She was formerly an employee
3 of GMAC. Now she's employed by Ocwen.

4 And she just -- she couldn't testify as to any issues
5 regarding the drafting of an execution of the power of
6 attorney. So she put in a declaration stating that fact that
7 she has no absolutely no testimony on this. So it's unclear
8 why Ms. Aniel would go forward with this.

9 And also, finally, Ms. Aniel is a vexatious litigant.
10 She has filed, and her siblings or children have filed,
11 multiple lawsuits in California. She's lost every single one
12 of them. And we don't believe it's appropriate for her to
13 depose one of Ocwen's employees. And she doesn't want to be
14 deposed by a harassing pro per litigant.

15 THE COURT: Well, Mr. Kornberg --

16 MR. KORNBERG: I hate to put it that way, but that's
17 kind of the way we categorize it.

18 THE COURT: Mr. Kornberg, at least a part of Ms.
19 Aniel's claim has survived here. That's why we're having an
20 evidentiary hearing coming up. But --

21 MR. KORNBERG: And I understand, Your Honor. But
22 that's why we've also addressed the merits of it, that she has
23 no testimony she could provide.

24 THE COURT: Let me see if we can deal with that.

25 Before we go on, I also want to note that Ms. Aniel

1 filed a motion to expunge to strike what she describes as
2 Ocwen's motion to quash the subpoena, and she also -- I
3 received a little while ago -- she, I believe, sent to chambers
4 a copy of the sheriff's return from the purported service of
5 the subpoena for a deposition on Mira Smoot. What the return
6 of service -- what the sheriff's return shows is the individual
7 served was Kristine Lofrese, L-O-F-R-E-S-E, not Mira Smoot.
8 And Ms. Smoot's declaration indicates she wasn't in the office
9 that day.

10 In any event, I have the two motions pending before
11 me. Ms. Aniel, let me hear from you.

12 MS. ANIEL: First of all, Your Honor, the
13 characterization of the counsel about me being a vexatious
14 litigant is too personal. I thought because I own like seven
15 houses, when I filed my bankruptcy, and the judgment we got at
16 home here allowed me to file it outside the bankruptcy court.
17 That's what I did.

18 And also --

19 THE COURT: Ms. Aniel -- Ms. Aniel. Let me stop you.
20 Because I'm not deciding this on the basis of an allegation
21 that you're a vexatious litigator.

22 MS. ANIEL: Okay. Just --

23 THE COURT: So that's not going to be the -- that's
24 not going to be the basis for any ruling by the Court. You
25 have a claim that survived the Trust's objection. It's

1 scheduled for hearing. The issues that concern me is you
2 attempted to notice this deposition shortly before -- and I
3 think too shortly before the close of fact discovery under the
4 case management order that's in here. And what the Smoot
5 declaration and what the sheriff's return shows is Ms. Smoot
6 wasn't served with a subpoena nor was she given a witness fee.
7 That's not a technical defect. That's a defect. It's not an
8 effective subpoena without that.

9 MS. ANIEL: Your Honor, this is the second time the
10 Sheriff of Montgomery County served a subpoena to Mira Smoot.
11 The first time they made a mistake and served it on her
12 residence. And the person that was talked to by the deputy
13 said that she already moved out two months ago. And then I
14 talked to the sheriff and said that he should follow -- this
15 was before December 25 -- I told her you have to follow my
16 instruction that she should be served on her employment. And
17 that's why they told me to have it -- have another subpoena to
18 be sent to them so that they could serve it on her employment
19 location.

20 And the sheriff also confirmed last Thursday that the
21 deputy sheriff, he went to 1100 Virginia Drive, and it was
22 Kristine Lofrese who is -- who received that -- that document
23 that's saying that she's going to give it to Mira Smoot,
24 because she has to -- she has to do it proper channels, because
25 she's an employee of Ocwen, but there's a proper channel to

1 serve any subpoena. So it was Kristine Lofrese that accepted
2 that.

3 So that's the only way that the sheriff could serve it
4 through a proper channel. And --

5 THE COURT: No, it's not. No. Ms. -- I'm sorry, Ms.
6 Aniel, the sheriff had to serve Ms. Smoot. You weren't
7 serving -- and you make this clear in your papers, that you
8 weren't seeking to depose her in connection with her employment
9 with Ocwen, you're seeking to depose her in connection with her
10 former employment with GMAC.

11 Okay. The Court has considered both motions. It's
12 clear from the record, both the declaration of Ms. Smoot in
13 support of quashing the subpoena, the document which Ms. Aniel
14 recently sent to chambers an hour ago, the sheriff's return
15 that shows the subpoena was not served on Mira Smoot, it was
16 served on Kristine Lofrese. So on two grounds, the Court is
17 quashing the subpoena.

18 First, the subpoena wasn't properly served and no
19 witness fee was tendered or paid. Second, the amount of time
20 that was provided for notice is not -- is inadequate. The
21 subpoena was attempted to be served by the sheriff on January
22 21, 2016, for a deposition on January 29th. That's just not
23 sufficient notice in any event. But since the subpoena was not
24 served, the real issue here is, there has not been effective
25 service of the subpoena.

1 So the motion to quash the subpoena is granted.
2 Tomorrow is the close of fact discovery. No extension of fact
3 discovery will be given. We're going to proceed to trial.

4 The court is adjourned. Thank you very much,
5 everybody.

6 MR. KORNBERG: Thank you, Your Honor.

7 MS. ARETT: Thank you, Your Honor.

8 (Whereupon these proceedings were concluded at 3:22 PM)

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I N D E X

RULINGS

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

Date: January 29, 2016